

McLaren Saksama (M) Sdn Bhd v Hong Leong Bank Bhd

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HIGH COURT (KUALA LUMPUR) — SUIT NO S-22-372 OF 2008
ROSILAH YOP JC
27 FEBRUARY 2013

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Banking — Banker and customer — Forgery — Forgery of company cheques — Forged cheques honoured by bank — Irregular transactions of cheques — Whether protected under s 12 of the Civil Law Act 1956 — Failure to notify forgery of cheques to bank — Whether bank protected under s 73A of the Bills of Exchange Act 1949

C

Evidence — Expert evidence — Handwriting — Expert opinion — Reliability of expert opinion — Whether carried any evidential weight

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The plaintiff was a customer and a current account holder with the defendant, a bank. In the present action, the plaintiff contended that the defendant had made wrongful payment of 105 cheques from the plaintiff's current account to third parties. As a result, the plaintiff suffered losses. The plaintiff claimed that the signatures of the signee ('SP2') on the said cheques were forged. On the other hand, the defendants argued that the plaintiff failed to prove that SP2's signatures on the 105 cheques were forged. It was alternatively argued that even if the forgery was proven, the defendant was protected under s 73A of the Bills of Exchange Act 1949 ('the Act') as the plaintiff did not notify the defendant that the signatures were forged. The defendant further claimed partial defence under s 12 of the Civil Law Act 1956 as it was submitted that the plaintiff's directors failed to take reasonable measures in detecting irregular transactions involving cheques. Before the court, the issues that arose for determination were, inter alia: the burden and standard of proof in establishing forgery; whether the plaintiff was bound by the rules governing the opening of a current account; the plaintiff's failure to call a material witness ('Suhaila'); and whether it was safe for the court to rely on the opinion of the handwriting expert without cogent grounds that supported the findings.

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Held, dismissing the plaintiff's claim with costs:

- (1) It was settled law that forgery had to be established on the balance of probabilities. The burden of proof to establish forgery rested upon the plaintiff throughout the trial. The evidential burden of proof shifted to the defendant once the plaintiff discharges his burden of proof. If the plaintiff failed to discharge the original burden of proof, then the defendant need not adduce any evidence (see paras 16–18).

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- A (2) The plaintiff had knowledge and was bound by the rules governing the opening of a current account as the said rules were provided to the plaintiff (see para 24).
- B (3) The evidence of the witnesses that Suhaila had admitted to them that she had forged SP2's signature was not admissible. The evidence was hearsay. Suhaila, a material witness was not called to testify. Hence, the court was prompted to draw an adverse inference under s 114(g) of the Evidence Act 1950 against the plaintiff (see paras 36–37).
- C (4) Signatures signed differently did not mean that it was evidence of forgery. No signature could be exactly the same even though it was written by the same person. The evidence by a handwriting expert could never be conclusive because it was only opinion evidence. The plaintiff's failure to send the specimen signature card which contained SP2's signature for analysis was fatal to the plaintiff's case as the expert could not form his opinion on the 79 cheques without comparing the signature of SP2's on the specimen card. It was not safe for the court to rely on handwriting expert report if there was no concrete footing to support the findings made. The expert opinion was rendered as a bare expression of opinion which could not carry any weight (see paras 33, 39, 40 & 51).
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E **[Bahasa Malaysia summary]**

- F Plaintiff adalah pelanggan dan pemegang akaun semasa dengan defendan, sebuah bank. Dalam tindakan ini, plaintiff berhujah bahawa defendan telah membuat bayaran yang salah sebanyak 105 cek daripada akaun semasa plaintiff kepada pihak ketiga. Akibatnya, plaintiff mengalami kerugian. Plaintiff mendakwa bahawa tandatangan-tandatangan penandatangan ('SP2') di atas cek-cek tersebut adalah palsu. Sebaliknya, defendan-defendan berhujah bahawa plaintiff gagal untuk membuktikan bahawa tandatangan penandatangan SP2 di atas 105 cek tersebut adalah palsu. Dihujahkan secara alternatif bahawa walaupun pemalsuan tersebut dibuktikan, defendan dilindungi di bawah s 73A Akta Bil Pertukaran 1949 ('Akta') memandangkan
- G plaintiff tidak memberitahu defendan bahawa tandatangan-tandatangan adalah palsu. Defendan selanjutnya menuntut pembelaan sebahagian di bawah s 12 Akta Undang-Undang Sivil 1956 kerana ia diujahkan bahawa pengarah-pengarah plaintiff gagal untuk mengambil langkah-langkah munasabah dalam mengesan transaksi luar biasa yang melibatkan cek-cek. Di
- H hadapan mahkamah, isu-isu yang berbangkit untuk penentuan adalah, antara lain: beban dan standard bukti dalam membuktikan pemalsuan; sama ada plaintiff terikat oleh peraturan-peraturan yang mengawal pembukaan akaun semasa; kegagalan plaintiff untuk memanggil saksi material ('Suhaila'); dan sama ada adalah selamat untuk mahkamah bergantung ke atas pandangan
- I pakar tulisan tangan tanpa alasan-alasan meyakinkan yang menyokong dapatan.

Diputuskan, menolak tuntutan plaintiff dengan kos:

- (1) Adalah undang-undang nyata bahawa pemalsuan mesti dibuktikan atas

imbangan kebarangkalian. Beban pembuktian untuk membuktikan pemalsuan terletak ke atas plaintif sepanjang perbicaraan. Beban pembuktian berpindah kepada defendan apabila plaintif membuktikan beban pembuktiannya. Jika plaintif gagal untuk membuktikan beban pembuktian asal, defendan tidak perlu mengemukakan apa-apa keterangan (lihat perenggan 16–18).

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- (2) Plaintif mempunyai pengetahuan dan terikat dengan peraturan-peraturan yang mengawal pembukaan akaun semasa memandangkan peraturan-peraturan tersebut diperuntukkan kepada plaintif (lihat perenggan 24).

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- (3) Keterangan saksi-saksi bahawa Suhaila telah mengaku kepada mereka yang dia telah memalsukan tandatangan SP2 tidak boleh diterima. Keterangan tersebut adalah kata dengar. Suhaila, saksi material tidak dipanggil untuk memberi keterangan. Maka, menyebabkan mahkamah untuk membuat inferens bertentangan di bawah s 114(g) Akta Keterangan 1950 terhadap plaintif (lihat perenggan 36–37).

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- (4) Tandatangan-tandatangan yang ditanda dengan berbeza tidak bermaksud yang ia adalah palsu. Tiada tandatangan boleh menjadi sama walaupun ia ditulis oleh orang yang sama. Keterangan oleh pakar tulisan tangan tidak dapat menjadi konklusif kerana ia hanya keterangan pandangan. Kegagalan plaintif untuk menghantar spesimen kad tandatangan yang mengandungi tandatangan SP2 untuk analisa adalah kritikal kepada kes plaintif memandangkan pakar tidak dapat membuat pandangannya ke atas 79 cek tanpa membandingkan tandatangan SP2 atas kad specimen. Adalah tidak selamat untuk mahkamah bergantung atas laporan pakar tulisan tangan jika tidak terdapat alasan kukuh untuk menyokong dapatan yang dibuat. Pandangan pakar memaparkan sebagai penyataan pandangan sahaja yang tidak boleh diterima pakai (lihat perenggan 33, 39, 40 & 51).]

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Notes

For cases on forgery, see 1(1) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 2316–2324.

For cases on handwriting, see 7(1) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 1811–1823.

H

Cases referred to

CS Petroleum Sdn Bhd v Public Bank Berhad & Other Cases [2011] 1 LNS 1349, HC (refd)

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Chang Wei Lu, Personal Representatives of the Estate of Chang Guan Nyai (deceased) v Chang Lee Mooi [1996] 2 BLJ 227, HC (refd)

Crawford v Financial Institutions Services Ltd (Jamaica) [2005] UKPC 40 (refd)

Doe D Devine v Wilson (1855) 10 Moo PCC 502, PC (refd)

- A** *Dr Shanmuganathan v Periasamy s/o Sithambaram Pillai* [1997] 3 MLJ 61; [1997] 2 CLJ 153, FC (refd)
Eastern & Oriental Hotel (1951) Sdn Bhd v Ellarlous George Fernandez & Anor [1989] 1 MLJ 35; [1988] 2 CLJ 734; [1988] 1 CLJ (Rep) 50, SC (refd)
Farmosa Resort Properties Sdn Bhd v Bank Bumiputra Malaysia Bhd [2010] 6 CLJ 530, CA (refd)
- B** *Guthrie Sdn Bhd v Trans-Malaysian Leasing Corp Bhd* [1991] 1 MLJ 33; [1991] 1 CLJ 9; [1991] 1 CLJ (Rep) 155, SC (refd)
Leong Hoong Khie v PP & Another Case [1986] CLJ 179 (Rep), FC (refd)
Mawaz Khan v The Queen [1967] 1 AC 454, PC (refd)
- C** *Munusamy v PP* [1987] 1 MLJ 492; [1987] CLJ (Rep) 221; [1987] 1 CLJ 250, SC (refd)
Nina Kung v Wang Din Shin [2005] HKCFA 54 (refd)
Ratten v The Queen [1972] AC 378, PC (refd)
Reijfiek v McElroy (1965) 112 CLR 517, HC (refd)
- D** *Selvaduray v Chinniah* [1939] MLJ 253; [1939] 1 LNS 107, HC (refd)
Subramaniam v PP [1956] 1 MLJ 220; [1956] 1 LNS 115, PC (refd)
Syarikat Islamiyah v Bank Bumiputra Malaysia Bhd [1988] 3 MLJ 218; [1988] 1 LNS 78, HC (refd)
- E** *Tay Tong Chew & Anor v Abu Rahman Hj Ahmad* [1984] 2 CLJ 227; [1984] 1 CLJ (Rep) 389, FC (refd)
United Asian Bank Bhd v Tai Soon Heng Construction Sdn Bhd [1993] 1 MLJ 182; [1993] 2 CLJ 31, SC (refd)
Yoong Sze Fatt v Pengkalen Securities Sdn Bhd [2010] 1 MLJ 85; [2010] 1 CLJ 484, CA (refd)
- F**

Legislation referred to

Bills of Exchange Act 1949 ss 24, 73A
Civil Law Act 1956 s 12

- G** Evidence Act 1950 ss 51, 101(1), 102, 114(g)
N Krishna Moorthy (Farrah Dina bt Alodin with him) (Fauzi, Ngah & Neasa) for the plaintiff.
Andrew Chiew (CB Loh and Sara Ann Chay Sue May with him) (Lee Hishammuddin Allen & Gledhill) for the defendant.
- H**

Rosilah Yop JC:

THE PLAINTIFF'S CASE

- I** [1] The plaintiff was a customer of the defendant and having the current account No 00100063923. The authorised cheque signatories of the said plaintiff's current account are:
(a) Wong Kern Chen;

(b) Lum Siew Wai; and

A

(c) Leong Yee Fook.

[2] Anyone of these signatories can endorse cheques for RM5,000 or less. Cheques exceeding RM5,000 required joint endorsement by any two of the above authorised signatories.

B

[3] Between July 2000 and September 2002, the defendant paid various cash cheques amounting to RM465,040 purporting to be drawn by the plaintiff payable to bearer and debited the plaintiff's account with the amount thereof.

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[4] The particulars of the 105 cheques are pleaded in para 6 of the statement of claim.

D

[5] The plaintiff did not draw the said cheque or authorise the drawing of the said cheques.

[6] The signature on each of the said cheque was not that of the authorised signatories. The signatures were forged. The defendant had paid out the said cheques to the third party. In the premise, the plaintiff had suffered losses.

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THE DEFENDANT'S CASE

[7] The defendant denies that the signatures of Leong Yee Fook were forged. It is the defendant's case that Leong Yee Fook signed the cheques.

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[8] The plaintiff did not notify the defendant that the signatures of the cheques, which were cleared between July 2000 and September 2002, were purportedly forged notwithstanding that the plaintiff knew and was obliged to do so. The plaintiff protested only for the first time that the signatures of the cheques were forged on 8 August 2003.

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[9] In all the circumstances, the plaintiff is precluded by the rules, which form the terms and conditions for the current account, from contending the cheques were honored in breach of mandate, in the alternative, the plaintiff is estopped by conduct from doing so.

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[10] Further and in the alternative, the defendant contends that the plaintiff negligently contributed to the alleged forged signatures on the cheques. The defendant contends that:

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(a) the plaintiff's directors failed to check or take responsible steps to check

- A the plaintiff's statement of accounts on monthly basis and hence, failed to detect the alleged irregular transactions involving the cheques;
- (b) the plaintiff's directors also failed to undertake regular review of its cheques and conduct regular reconciliation of cheques paid with the plaintiff's monthly statement of account;
- B (c) the plaintiff's directors failed to ensure that the cheques books were kept under the custody, control and/or possession of the plaintiff's duly authorised signatories or persons authorised by the plaintiff to confirm the transactions of the cheques drawn against the current account; and
- C (d) the plaintiff's directors failed to exercise reasonable care in supervising the plaintiff's employees who during the material times had custody, control and possession of the plaintiff's cheques book.

D [11] The defendant had acted in good faith in clearing the cheques.

[12] Therefore the defendant is entitled to either a complete statutory defence under s 73A of the Bills of Exchange Act 1949 or a partial defence under s 12 of the Civil Law Act 1956.

E ISSUES TO BE TRIED

[13] The agreed issues to be tried were stated in document marked as 'R' and reproduced as follows:

- F (1) Samada Plaintiff adalah tertakluk kepada 'Kaedah-Kaedah Akaun Semasa' dan / atau 'Kaedah-Kaedah Akaun Semasa Terpinda' dalam pengendalian dan pengurusan akaun Plaintiff di Defendan.
- G (2) Samada tandatangan pengisu cek dalam 105 cek-cek yang merupakan perkara subjek tuntutan ('Cek-Cek') ini telah dipalsukan.
- (3) Samada Plaintiff diestop daripada mendakwa Cek-Cek telah dipalsukan dan Defendan berhak untuk bergantung kepada Seksyen 24 Akta Pertukaran Bil 1949.
- H (4) Samada Defendan berhak kepada pembelaan di bawah s 73A Akta Pertukaran Bil 1949.
- (5) Samada Plaintiff telah melakukan cuai sumbangan dalam pengeluaran Cek-Cek dan kerugian Defendan seharusnya dikurangkan sebahagian atau secara keseluruhan di bawah Seksyen 12 Akta Undang-Undang Sivill 1956.
- I

ANALYSIS OF EVIDENCE AND FINDINGS

[14] The plaintiff action based on conversion against the defendant for

wrongful making payment of 105 cheques against the plaintiff's current account. The plaintiff claims that the signatures of Leong Yee Fook ('SP2') were forged.

A

[15] The defendant contends that the plaintiff failed to prove that SP2's signatures on the 105 cheques were forged. Even if the forgery is proven, the defendant is entitled to a complete defence under s 73A of the Bills of Exchange Act 1949, and in the s 12 of the Civil Law Act 1956.

B

LAW ON FORGERY

C

[16] In this case the onus is upon the plaintiff to establish the alleged forgery. The standard of proof of forgery in civil proceedings falls within the general rule of the common law that in the absence of a statutory provision to the contrary, proof in civil proceedings of facts amounting to the commission of a crime need only be on a balance of probabilities — see *Reiffek v McElroy* (1965) 112 CLR 517 (HC) Australia.

D

[17] It is now settled law that forgery need only be established on a balance of probabilities — see *Doe D Devine v Wilson* (1855) 14 ER 581, at p 592 (PC); *United Asian Bank Bhd v Tai Soon Heng Construction Sdn Bhd* [1993] 1 MLJ 182; [1993] 2 CLJ 31 (SC); *Syarikat Islamiyah v Bank Bumiputra Malaysia Bhd* [1988] 3 MLJ 218; [1988] 1 LNS 78).

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[18] In the light of the above mentioned the burden of proof to establish forgery rests upon the plaintiff — s 101(1) of the Evidence Act 1950. The burden of proof on the plaintiff is twofold: (a) the burden of establishing a case; and (b) the burden of introducing evidence.

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[19] The burden of proof lies on the plaintiff throughout the trial. The evidential burden of proof is only shifted to the defendant once that the plaintiff has discharged his burden of proof. If the plaintiff fails to discharge the original burden of proof, then the defendant need not adduce any evidence.

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[20] Therefore, it is the plaintiff who must establish his case. If he fails to do so, it will not for the plaintiff to say that the defendant has not established his defence — see *Selvaduray v Chinniah* [1939] MLJ 253; [1939] 1 LNS 107 (CA); s 102 of the Evidence Act 1950.

I

ISSUE 1

[21] The plaintiff contends that there is no evidence to show that exh D13 ie

A the rules governing the opening of current account, was given to the plaintiff and thus, the legal effect of it, the plaintiff cannot be bound by the said rules.

B [22] The plaintiff submitted that during the cross-examination of DW1, DW1 could not confirm whether the said rules were actually given to the plaintiff. Further, during the cross-examination DW1 confirmed that he was not working with the defendant after February 2001 and had no knowledge of the rules being given to the plaintiff. As such plaintiff was unaware of such rules.

C [23] The defendant's contention is that the plaintiff is governed by the said rules and the rules were given to the plaintiff.

D [24] Through the account opening form (bundle C p 94) clearly shows that the plaintiff acknowledged receipt exh D13. PW2 testified and confirmed that the plaintiff's finance department would have D13.

E [25] From the evidence, from both sides, I conclude that the plaintiff have knowledge and did receive D13 and D13 binds the plaintiff.

ISSUE 2

F [26] The plaintiff had adduced the following evidence to prove forgery:

- (i) SP2 confirmed that the signatures on the 105 cheques were not his;
- (ii) Suhaila admitted to SP2 and SP5 that she had forged the signatures of SP2; and
- (iii) handwriting expert opinion by SP6.

G

EVIDENCE OF SP2

H [27] Was there any evidence of forgery?

[28] The plaintiff claimed the signatures of SP2 on the 105 cheques were forged. SP2 is one of the authorised signatories of the plaintiff's account and also the director of the plaintiff.

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[29] SP2 testified that he had only seen 79 cheques. SP2 never see the remaining 26 cheques (Annexure A). This was confirmed by the evidence of SP2 in cross-examination that he assumed the remaining 26 cheques were forged.

[30] Out of these 26 cheques, 12 cheques were sent by the defendant for the expert opinion. The plaintiff did not even ask SP2 to identify as to whether his signatures on these 12 cheques were forged. A

[31] SP2 claimed that his signatures on the 79 cheques at pp 13–91, bundle C were forged. B

[32] SP1 in cross-examination agrees that the signatures by the same person cannot be exactly the same. C

[33] In this regard, it is an accepted fact that a signature signed differently does not necessary mean that it is evidence of forgery. In *Nina Kung v Wang Din Shin* [2005] HKCFA 54, Chan PJ said:

... No two signatures written by the same person can be exactly the same. There are bound to be difference ... D

[34] I agree that no signature can be exactly the same even though written by the same person. E

[35] The defendant produced undisputed cheques, D16(1) to D16(17). SP2 confirmed that his signatures on these undisputed cheque were similar to those 79 cheques which he alleged forgery. These cheques were also cleared from June 2000–December 2001 (the same period when the 105 cheques were cleared). There is no iota of evidence that the plaintiff ever disputed these cheques. These cheques are not part of the plaintiff's claim. SP2 did not give any satisfactory explanation to explain the contradiction. F

[36] It is obvious that SP2's evidence that the signatures on the 79 cheques are forged is obviously inconsistent with SP2's evidence on the undisputed cheque ie D16(1) to D16(17). G

ADMISSION BY SUHAILA H

[37] During the trial, SP2 and SP5 testified that Suhaila admitted to them that she had allegedly forged SP2's signatures. I take note that the Suhaila was not called as a witness at all during the trial. Hence, the evidence given by SP2 and SP5 is not admissible. It is hearsay evidence — see *Leong Hoong Khie v Public Prosecutor & Another Case, Federal Court*, [1986] CLJ 179 (Rep); [1986] 2 CLJ 291, *Subramaniam v Public Prosecutor* [1956] 1 MLJ 220; [1956] 1 LNS 115, Privy Council in *Mawaz Khan v The Queen* [1967] 1 AC 454 and *Ratten v The Queen* [1972] AC 378. I

- A [38] Suhaila is an important witness to the plaintiff's case. She was said to have admitted that she had forged the signatures of SP2. Suhaila should be called to give evidence but she was not called to give evidence in court. No credible reason has been given for her non-attendance at trial such as to allow for an adverse inference to be drawn against the plaintiff under s 114(g) of the Evidence Act 1950. Based on this statutory presumption, her evidence, if called, could only be unfavourable to the plaintiff. Further, the failure to call Suhaila in these circumstances amounts to a conscious withholding or suppression of evidence which has denied the defendant the opportunity to cross-examine her on the alleged admission. Suhaila is, in these circumstances, a very material witness whose evidence will be crucial in unfolding the narrative of the case — see *Selvaduray v Chinniah* [1939] MLJ 253; [1939] 1 LNS 107 and *Munusamy v Public Prosecutor* [1987] 1 MLJ 492; [1987] CLJ (Rep) 221; [1987] 1 CLJ 250. The burden is on the plaintiff to call Suhaila to lead evidence on the allegation of admission.
- D

- [39] It is well settled that in civil proceedings the court may draw adverse inferences from a plaintiff's decision not to give or call evidence as to matters within the knowledge of Suhaila — refer to Privy Council in the case of *Crawford v Financial Institutions Services Ltd (Jamaica)* [2005] UKPC 40, (see also cases *Tay Tong Chew & Anor v Abu Rahman Hj Ahmad* [1984] 2 CLJ 227; [1984] 1 CLJ (Rep) 389; *Eastern & Oriental Hotel [1951] Sdn Bhd v Ellarlous George Fernandez & Anor & Another Case* [1989] 1 MLJ 35; [1988] 2 CLJ 734; [1988] 1 CLJ (Rep) 50; and *Guthrie Sdn Bhd v Trans-Malaysian Leasing Corp Bhd* [1991] 1 MLJ 33; [1991] 1 CLJ 9; [1991] 1 CLJ (Rep) 155.
- E
- F

[40] Hence the plaintiff's case under this issue is rejected by this court.

G THE PLAINTIFF'S HANDWRITING EXPERT OPINION (SP6)

- [41] The evidence by a handwriting expert can never be conclusive because it is only opinion evidence. It is trite law that the principal object of expert evidence is merely to assist the court to form its own opinion — refer to the Federal Court case of *Dr Shanmuganathan v Periasamy Sithambaram Pillai* [1997] 3 MLJ 61; [1997] 2 CLJ 153.
- H

- [42] The law on handwriting expert opinion, it is settled law that the bare opinion of an expert, without cogent grounds to support his findings, is of no value or use as evidence.
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[43] See s 51 of the Evidence Act 1950:

51 Grounds of opinion when relevant

Whenever the opinion of any living person is relevant, the grounds on which his opinion is based are also relevant.

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[44] The Supreme Court clearly upheld this principle in case of *United Asian Bank Bhd v Tai Soon Heng Construction Sdn Bhd* [1993] 1 MLJ 182; [1993] 2 CLJ 31 at pp 36–37:

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... In a civil case and more so in a criminal case, the evidence of an expert on handwriting unsupported by cogent data showing the process by which he came to his conclusion is not worth the paper on which it is written and any reliance upon such evidence would, in our judgment, constitute a serious misdirection warranting interference by an appellate tribunal.

C

[45] On becoming a bare expression of opinion according to Abdul Malik Ishak JCA in *Yoong Sze Fatt v Pengkalen Securities Sdn Bhd* [2010] 1 MLJ 85; [2010] 1 CLJ 484:

D

The courts have said, time and again, that a bare expression of opinion has no evidentiary value at all (*Sim Ah Song & Anor v Rex* [1951] MLJ 150; [1951] 1 LNS 83; *Lai Yong Koon v Public Prosecutor* [1962] MLJ 327; [1962] 1 LNS 74; and *Public Prosecutor v Yiau Swee Tung* [1999] 3 MLJ 353; [1998] 1 LNS 355).

E

[46] SP6 was called to tender his signature verification report dated 24 February 2010 on SP2's signatures on the 79 cheques.

[47] The basis of SP6's opinion was not stated during examination-in-chief. During cross-examination, SP6 confirmed that the basis in which he arrived at his opinion is not set out in his report.

F

[48] SP6 did not show in his report, the process by which he came to his conclusion. No reason was provided by SP6 to substantiate his findings.

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[49] In addition to the above, it is the evidence of SP6 that he did not examine the specimen signature card that contained SP2's signature.

H

[50] In *Farmosa Resort Properties Sdn Bhd v Bank Bumiputra Malaysia Bhd* [2010] 6 CLJ 530, it was held that:

The failure of the expert to examine the specimen signature card would have a disastrous effect on the party seeking to rely on the expert report.

I

[51] It is the evidence of the defendant's witnesses that they relied on the signature of SP2 on the specimen card to approve the payment of the 105 cheques.

A [52] The plaintiff did not send the specimen signature card which contained SP2's signature to SP6 for analysis. This is fatal to the plaintiff's case since SP6 cannot form his opinion on the signatures on these 79 cheques to be compared with the signature of SP2 on the specimen card.

B [53] I find that it is essential for the specimen signature by SP2 to be analysed and compared with the questioned signatures before coming to his conclusions to be properly discovered and tendered as evidence for the consideration of the court. Simply put, it is not safe for the court to rely on handwriting expert report if there is no concrete footing to support the finding made. Without them based on the cited authorities, SP6's opinion is rendered as a bare expression of opinion without more, and as such, cannot be given any weight.

D [54] The plaintiff bears the burden of proving forgery. It is also trite law that until the plaintiff has done so, there is no onus on the defendant to disprove the allegation — see *Chang Wei Lu v Chang Lee Mooi* [1996] 2 BLJ 227, *CS Petroleum Sdn Bhd v Public Bank Berhad & Other Cases* [2011] 1 LNS 1349.

E [55] Based on the above, the plaintiff failed to prove on a balance of probabilities that SP2's signatures on 105 cheques were forged.

ISSUE 3, 4 AND 5

F [56] The plaintiff failed to prove that all the signatures on the 105 cheques were forged. Hence, issue 3–5 here are irrelevant. There was no onus on the defendant to disprove that all signatures on 105 cheques belongs to SP2.

G [57] Accordingly, in light of the facts that the court had found the plaintiff have failed to prove that signatures of SP2 were forged, that the plaintiff have failed to make out their case against the defendant on the balance of probabilities. The plaintiff's case against the defendant is thus dismissed with costs. Costs of RM30,000 are to be paid by the plaintiff to the defendant.

Plaintiff's claim dismissed with costs.

H

Reported by Afiq Mohamad Noor

I